

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES	)	
	)	
	)	
v.	)	CRIMINAL ACTION NO. 03-10329-PBS
	)	
AMANDO MONTEIRO, et al.,	)	
	)	
_____	)	

**MEMORANDUM AND ORDER**

September 6, 2005

Saris, U.S.D.J.

Defendant Amando Monteiro moves to suppress all evidence obtained as a result of an automobile stop and search by Randolph, Massachusetts police officers on March 4, 1999 on the grounds that the officers lacked a reasonable and articulable suspicion of criminal activity. At the evidentiary hearing on June 10, 2005, Patrolman Robert Audette of the Randolph Police Department and Marcelino Rodrigues testified. After hearing, the motion to suppress is **DENIED**.

**I. FINDINGS OF FACT**

On March 4, 1999, defendant drove his car, a white Acura Integra, from Dorchester to Randolph, Massachusetts, with two passengers: Marcelino Rodrigues in the passenger seat and Nelson Burgos in the back seat. Rodrigues, who was high on marijuana,

knew there were guns in the car, but did not see them.<sup>1</sup> A little before 8:00 PM, Patrolman Robert Audette spotted the Integra traveling North on North Main Street. Because he had seen the car a few times before and was unfamiliar with it, out of curiosity, Audette ran the license plate at 7:57 PM and discovered that the car's owner, Monteiro, had a suspended license. At 8:22 PM, he pulled over the car.

Audette spoke with Monteiro, who identified himself, and Audette arrested him. Handcuffing Monteiro, Audette put him into the back of his squad car. By that point, two other police officers, Richard Lucey and Jeffrey Chaplain, had arrived. The officers then asked Rodrigues and Burgos to exit the car. One of the officers conducted a cursory search of the car, while the other officers checked Rodrigues and Burgos for warrants and pat-frisked their outer garments. Upon finding nothing in the car, the officers asked Rodrigues and Burgos if they could drive the car away. Rodrigues could not drive a stick shift and Burgos had an expired license, so the police released them and called a tow truck.

Before the Integra was towed away, Audette conducted an inventory of the car in accordance with Randolph Police Department policy. Kneeling on the driver seat and illuminating the interior of the vehicle with his flashlight, he saw a long

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<sup>1</sup> Rodrigues is a cooperating witness for the government.

horizontal tear in the gear shift hump, about one-half foot up from the floor of the passenger's side, with a metal barrel protruding from the crack. Audette pulled at the plastic and a handgun started to fall out from the crack.

The car was then towed to the police station and Audette examined the driver's side of the gear shift hump. The plastic on that side was ripped in the same manner as on the passenger side. Audette reached in and felt a second gun. This second gun was not visible from the outside. Audette then obtained a search warrant. After procuring the search warrant, the police removed the firearm from the driver's side console area.

## **II. DISCUSSION**

### **A. Traffic Stop**

"A traffic stop, by definition, embodies a detention of the vehicle and its occupants." United States v. Chhien, 266 F.3d 1, 5 (1st Cir. 2001). "It therefore constitutes a seizure within the purview of the Fourth Amendment." Id. (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)); see also Whren v. United States, 517 U.S. 806, 809-10 (1996) ("Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision."). "This means, of course, that the stop must be supported by a reasonable and articulable suspicion of criminal activity and

that the detention must be reasonable under the circumstances." Chhien, 266 F.3d at 5-6 (internal citations omitted). A reasonable, articulable suspicion is "more than a naked hunch," but less than "either probable cause or evidence of a direct connection linking the suspect to the suspected crime." Id. at 6.

Officer Audette properly checked the Integra's license plates, which were in plain view and seen from a vantage point where he was entitled to be. Upon running the plates, Audette discovered that the owner of the car had a suspended license, a violation of state law. Although Audette could not identify the driver of the vehicle until after the stop, it was reasonable to suspect that Monteiro was driving his own car. See West v. Duncan, 179 F. Supp. 2d 794, 803 (N.D. Ohio 2001) (holding that a computer search revealing that the vehicle's owner had a suspended license gave the police probable cause for a traffic stop despite the fact that the police did not know if the driver was the owner); Commonwealth v. Deramo, 762 N.E.2d 815, 818 (Mass. 2002) ("While it is certainly possible that someone other than a vehicle's registered owner may be operating the vehicle on any given occasion, the likelihood that the operator is the owner is strong enough to satisfy the reasonable suspicion standard.").

#### **B. Inventory Search**

Defendant argues that the police conducted an invalid

inventory search of the console in the vehicle and that, therefore, the discovery of the first gun is inadmissible. An inventory search is a "well-defined exception to the warrant requirement of the Fourth Amendment." Colorado v. Bertine, 479 U.S. 367, 371 (1987). When a car properly enters the custody of the police, courts defer to police "caretaking procedures designed to secure and protect vehicles and their contents." Id. at 372.

To ensure that inventory searches do not become "a ruse for a general rummaging in order to discover incriminating evidence," Florida v. Wells, 495 U.S. 1, 4 (1990), inventories must follow standardized police procedures and "serve to protect an owner's property," id. (quoting Bertine, 479 U.S. at 372). An inventory search must be reasonable in scope. See United States v. Best, 135 F.3d 1223, 1225 (8th Cir. 1998) (holding that the discovery of bags of marijuana inside the passenger door frame of a car exceeded the proper scope of an inventory search); United States v. Lugo, 978 F.2d 631, 637 (10th Cir. 1992) ("Although the permissible scope of an inventory search has not been well-defined, searching behind the door panel of a vehicle does not qualify as 'standard police procedure,' and does not serve the purpose of 'protecting the car and its contents' under any normal construction of those terms, at least on the evidence in this record.").

In this case, the police reasonably decided to impound the

Integra after they arrested Monteiro because Rodrigues could not drive a stick shift and Burgos had an expired license. See United States v. Rodriguez-Morales, 929 F.2d 780, 785-86 (1st Cir. 1991) (impoundment reasonable when driver was not properly licensed to drive and car was located on the shoulder of a highway); United States v. Velarde, 903 F.2d 1163, 1166-67 (7th Cir. 1990) (impoundment reasonable where neither occupant had valid license, owner was not available, and car was located on highway).

Officer Audette followed a written inventory procedure from the Randolph Police Department that called for an inventory of any vehicle that the police impounded "to locate and record all contents." (§ IIIA.) The procedure called for looking in passenger areas, in unlocked glove/map areas and "under the front seats and mats." (§ IVB.) Officer Audette noticed what looked like a gun sticking out from the gearshift console while looking in the front seats area. As a result, the discovery of the gun is valid and reasonable under the Fourth Amendment. See Michigan v. Long, 463 U.S. 1032, 1050 (1983); see also Commonwealth v. Goncalves, 815 N.E.2d 592, 595 (Mass. App. Ct. 2004) (holding that a police officer properly seized a gun without a warrant when he saw the gun in plain view on the floor of a vehicle after the arrest of the driver for driving with a suspended license).

Neither party briefed whether the search of the inside of the console area on the driver's side at the station after the

car was towed -- but before the search warrant was issued -- was justified under the inventory (or some other) exception to the search warrant requirement. Accordingly, I do not address that issue.

### **III. ORDER**

The motion to suppress (Docket No. 527) is **DENIED** as to the handgun on the passenger side.

**S/PATTI B. SARIS**  
United States District Judge